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| 09/771,329 | 01/26/2001 | Theresa M. Welbourne | 4849-000001 | 6747 |

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| EXAMINER |
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DENNISON, JERRY B

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| ART UNIT | PAPER NUMBER |
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2143

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/771,329

Applicant(s)

WELBOURNE, THERESA M.

Examiner

J. Bret Dennison

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Action is in response to Amendment (RCE) for Application Number 09/771329 received on 31 August 2005.
2. Claims 1-33 are presented for examination.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The term "pulse" is not explicitly defined in the instant Specification. The Specification states the following:

"The system uses changes in "pulse" to predict organizational problems and recommend changes to organizational structure and personnel" [see Spec, page 4, paragraph 0007].

"A pulse measurement is defined herein as a metric that is used to track the overall vitality or energy level of the members of an organization. The pulse measures three components of the work environment: the pace of work, efficiency of work, and job satisfaction" [see Spec, page 6, paragraph 00012].

Art Unit: 2143

There is no detail about how the pulse value is calculated based from these three components. There is no explicit definition of the term, just that it measures the three components mentioned above. Therefore, one of ordinary skill in the art would not be able to determine the meaning of the term pulse, how the pulse value is calculated, or how the three different components, having three different units, are used to derive any value whatsoever. If Applicant decides to traverse this rejection, Applicant is required to explicitly point out the portions of the Specification that accurately defines how pulse is calculated.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 14, and 27 include the limitations "consisting essentially of", the term "essentially" rendering the claim indefinite and unclear because the claim does not clearly set forth the metes and bounds of the patent protection desired.

Claims 2 and 9 include the limitation, "the pulse answers", suggesting that there is more than one pulse answer. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro in view of Altemuehle et al. (U.S. 2002/0120494).

5. Regarding claim 1, D'Alessandro disclosed a method of predicting and influencing the performance of an organization consisting of the steps of:

initiating a survey with an independent third party (D'Alessandro, col. 5, lines 44-53, D'Alessandro teaches initiating a survey to workers);

sending a first correspondence from the independent third party to a member of the organization (D'Alessandro, col. 5, line 50 through col. 6, line 30, D'Alessandro teaches initiating a survey to workers);

providing an independent third party web site (D'Alessandro, col. 5, lines 44-55); asking the member of the organization one question related to the member at the web site (D'Alessandro, col. 5, line 40 through col. 6, line 30, D'Alessandro teaches an administrator of the system giving a survey, asking questions related to the employee, for example, performance);

accessing the independent third party's web site by the member of the organization and responding thereto (D'Alessandro, col. 5, line 50 through col. 6, line 30);

sending the member's comments and responses to a database (D'Alessandro, col. 5, line 60-67, D'Alessandro teaches a database collecting survey results); and

analyzing the comments by the independent third party (D'Alessandro, col. 9, line 5-65, D'Alessandro teaches analyzing the survey data).

D'Alessandro did not explicitly state wherein the survey question is related to the member's pulse.

In an analogous art, Altemuehle disclosed a method and system for gathering employee feedback wherein employees are provided with a survey containing categories such as job satisfaction, the system providing a standardized rating system (Altemuehle, paragraph 0005, 0009).

D'Alessandro and Altemuehle both provide surveys for evaluating business performance through questions related to the employee (D'Alessandro, col. 5, lines 44-55; Altemuehle, paragraph 0005, 0009). The teachings of Altemuehle benefit D'Alessandro by providing confidential information regarding the level of satisfaction the employee feels toward the employer (Altemuehle, paragraph 0008).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to incorporate the types of questions asked in the survey of Altemuehle, into the survey of D'Alessandro on order to determine what aspects of the business should be improved (Altemuehle, paragraph 0005).

6. Regarding claim 2, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 1, including the step of the independent third party providing advice to the organization on how to respond to the member's pulse answer (D'Alessandro, col. 9, lines 54-60).

7. Regarding claim 3, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 1, including preparing a report from the pulse answers (D'Alessandro, col. 9, lines 35-40);

 sending the report to the web site (D'Alessandro, col. 9, lines 40-50,
D'Alessandro teaches the report is constructed in a database, located at the website server;

 notifying the organization that a report is available (D'Alessandro, col. 9, lines 30-35, D'Alessandro teaches that the system notifies management of the report);

 retrieving the report by the organization at the independent third party's web site (D'Alessandro, col. 9, lines 40-50); and

 sending a second correspondence from the independent third party to the member of the organization (D'Alessandro, col. 9, lines 40-50).

8. Regarding claim 4, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of calculating changes in a member's pulse (D'Alessandro, col. 5,

lines 44-46, D'Alessandro teaches obtaining information from individual employees regarding their perception of performance criteria existing in the workplace, lines 60-67, D'Alessandro also teaches comparing with prior survey data, therefore changes in pulse are calculated for each member).

9. Regarding claim 5, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of

10. determining whether a significant change has occurred to the pulse of the organization (D'Alessandro, col. 5, lines 60-67, D'Alessandro teaches comparing with prior survey data, col. 9, lines 5-30, D'Alessandro also teaches weighted scores).

11. Regarding claim 6, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of determining whether a significant change has occurred in the pulse of the member (col. 9, lines 5-20, D'Alessandro teaches a weighted score component so that data can be accurately tallied with sophisticated analysis and report generation).

12. Regarding claim 7, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of providing a set of best possible responses to the member's pulse answer (D'Alessandro, col. 9, lines 54-60).

13. Regarding claim 8, D'Alessandro teaches the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of editing responses to remove a member's identity (D'Alessandro, col. 4, lines 20-30, D'Alessandro teaches that employees are provided with the opportunity to submit candid answers to potentially sensitive questions, inherently meaning that their identity is removed).

14. Regarding claim 9, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of categorizing pulse answers (D'Alessandro, col. 9, lines 39-55).

15. Regarding claim 10, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 9, including wherein categorizing comments includes using an expert system (D'Alessandro, col. 9, lines 39-55).

16. Regarding claim 12, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 1, including the step of the independent third party contacting the member of the organization to let them know a response has been provided (D'Alessandro, col. 9, lines 50-60).

17. Regarding claim 13, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 1, including the step of providing a computer system having a member interface, an organization interface, and an independent third party interface (D'Alessandro, col. 6, lines 25-67, D'Alessandro, col. 6, lines 25-67 teaches a member interface, col. 9, lines 50-60, D'Alessandro teaches an organization interface by providing the results, col. 3, lines 60-67, D'Alessandro teaches a third party interface wherein the survey administrator can analyze survey results).

Claim1 is rejected under 35 U.S.C. 102(e) as being anticipated by Friedman (U.S. Patent Number 6,591,256).

18. Regarding claim 1, Friedman discloses a method of predicting and influencing the performance of an organization comprising the steps of:

initiating a survey with an independent third party (Friedman, col. 1, lines 53-56, Friedman teaches users being prompted for input);

sending a first correspondence from the independent third party to a member of the organization (Friedman, col. 1, lines 40-45, Friedman teaches a web page presented to the user of a business group);

providing an independent third party web site (Friedman, col. 1, lines 40-45, Friedman teaches a web page presented to the user of a business group);

asking the member of the organization at least one question related to the

individuals energy level at the web site (Friedman, col. 2, lines 60-67, Friedman teaches the web page asking for input related to business problems or categories of problems);

accessing the independent third party's web site by the member of the organization and responding thereto (Friedman, col. 3, lines 5-20, Friedman teaches the user accessing the web site to solve the user's business problem);

sending the member's comments and responses to a database (Fig. 1, 40, Friedman teaches the use of a database to solve problems); and

analyzing the comments by the independent third party (Friedman, col. 3, lines 1-25, Friedman teaches the business problems being mapped to one or more mathematical problems).

19. Regarding claim 11, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3. D'Alessandro does not explicitly state the second party providing a response to the member of the organization by forwarding it through the independent third party. However, it would have been obvious to one in the ordinary skill in the art at the time of the invention for the second party to provide a response to the member of the organization through their account with the third party (D'Alessandro, col. 6, lines 25-67) because providing a response is the same behavior as providing a survey through the third party.

20. Claims 14-33 contain a method and system with the same limitations as those of claims 1-13. Therefore claims 14-33 are rejected by the same art used in claims 1-13.

Response to Amendment

Applicant's arguments filed 31 August 2005 have been fully considered but they are not persuasive.

Applicant's arguments include the failure of previously applied art to disclose "a method of predicting and influencing the performance of an organization by collecting one variable – the pulse – of the members to obtain feedback on multiple factors" and "correlating one pulse question with one pulse answer for analysis." [see Applicant's response, page 10].

Applicant states, "the pulse response provides insight to the pace of work, efficiency of work, and job satisfaction" [see Applicant's response, page 9].

This does not specify what the pulse is or how it is defined or obtained. There are no details about how this pulse value is calculated using three different values that apparently have different units.

It is evident from the mappings found in the above rejection that the combination of D'Alessandro and Altemuehle disclosed the teaching of a survey system for evaluating results of employee survey responses to quantify various criteria relating to their performance including job satisfaction. D'Alessandro and Altemuehle disclosed obtaining information from individual employees regarding their perception of performance criteria existing in the workplace and comparing with prior survey data.

Further, it is clear from the numerous teachings (previously and currently cited) that the provision for using "online surveys" was widely implemented in the networking art.

Applicant only claims evaluating responses from a member of an organization through an online survey. By D'Alessandro and Altemuehle including a survey system for evaluating results related to the members employment, D'Alessandro and Altemuehle disclosed the invention.

Thus, Applicant's arguments drawn toward distinction of the claimed invention and the prior art teachings on this point are not considered persuasive. It is also clear to the Examiner that D'Alessandro and Altemuehle clearly taught the independent claims of the Applicant's claimed invention.

Furthermore, as it is Applicant's right to continue to claim as broadly as possible their invention, it is also the Examiner's right to continue to interpret the claim language as broadly as possible. It is the Examiner's position that the detailed functionality that allows for Applicant's invention to overcome the prior art used in the rejection, fails to differentiate in detail how these features are unique. As it is extremely well known in the networking art as already shown by D'Alessandro as well as other prior arts of records disclosed evaluating results of an online survey is taught as well as other claimed features of Applicant's invention. By the rejection above, the applicant must submit amendments to the claims in order to distinguish over the prior art use in the rejection that discloses different features of Applicant's claimed invention.

Examiner noticed an inadvertent typographical error in the previous office action pertaining to claims 12 and 13, however because reference was made to claims 12 and 13 regarding the prior art, it should be understood that claims 12 and 13 were rejected as being anticipated by D'Alessandro.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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